

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

Re: FOIA No. FY19-21  
Response Letter

**JAN 31 2019**

**VIA E-MAIL AND REGULAR MAIL**

Daniel Kaufman  
MuckRock News  
DEPT MR 65100  
411A Highland Ave.  
Somerville, MA 02144-2516  
[65100-91848218@requests.muckrock.com](mailto:65100-91848218@requests.muckrock.com)

Dear Mr. Kaufman:

This is a response to your correspondence received on December 20, 2018, in which you requested information pursuant to the Freedom of Information Act (FOIA),<sup>1</sup> and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2018). Specifically, you requested a copy of all materials regarding the "April 16, 2003 attack on PG&E's Metcalf substation" between the dates of August 2017 and December 20, 2018.<sup>2</sup>

A search of the Commission's non-public files identified 160 documents responsive to your request. Four of the documents had been submitted to the Commission by Paul Stockton of Sonecon, LLC, with a request for confidentiality. On January 25, 2019, pursuant to 18 C.F.R. § 388.112, Commission staff notified Mr. Stockton and provided him an opportunity to comment. On January 28, 2019, Mr. Stockton informed Commission staff that he had no objection to release of the documents.

Commission staff has reviewed all the responsive documents and determined that four documents may be released in their entirety, and 24 documents may be released with portions redacted pursuant to FOIA Exemptions 4, 5 and 6.<sup>3</sup> As explained below, the remaining 132 documents are withheld pursuant to FOIA Exemptions 5 and 6.

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<sup>1</sup> 5 U.S.C. § 552, *as amended* by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

<sup>2</sup> At the time your request was received, you clarified that news clips should not be included in responsive material.

<sup>3</sup> 5 U.S.C. § 552(b)(4), (5), and (6).

FOIA Exemption 5, which protects from disclosure inter-agency or intra-agency memoranda, incorporates various privileges, including the deliberative process privilege, which is at issue here. Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. *See Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also EPA v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that "[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny.")

The withheld and redacted documents contain pre-decisional and deliberative material. These documents include internal discussions of reports, summaries of reports, draft orders, draft memorandum and other internal and/or intergovernmental communications concerning the security of the electric grid. They are non-final, internal discussions about the Commission's role in promulgating physical security standards and audits. Releasing such material to you would stifle frank discussions among agency staff and could result in confusion by providing reasons and rationales that are not the ultimate reasons for agency action. Accordingly, they are protected by Exemption 5 and will not be disclosed.

FOIA Exemption 6 protects files that if disclosed would constitute a clearly unwarranted invasion of privacy, including the names, personal addresses and personal information of lower-level staff. Here, FOIA Exemption 6 has been applied to protect the names of lower-level Commission employees and personal information of private citizens and staff.

One document is a copyrighted publication that was provided to Commission staff as a courtesy. FOIA Exemption 4 protects such material from being released to the public. *See, e.g., Gilmore v. United States Dep't of Energy*, 4 F. Supp. 2d 912, 9223 (N.D. Cal. 1998) (declaring that "there is a presumption of irreparable harm when a copyright is infringed"). The document is publicly available for purchase and will not be disclosed pursuant to the FOIA.<sup>4</sup>

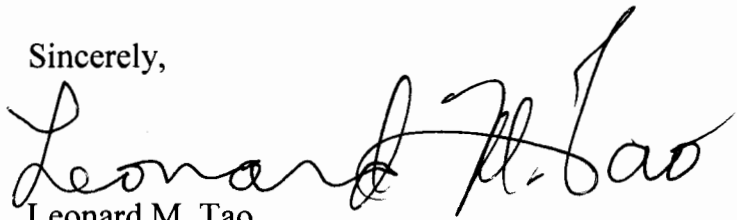
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<sup>4</sup> *See Pry, Peter, EMP Manhattan Project* (Aug. 2018), available at: <https://www.amazon.com/EMP-Manhattan-Project-Peter-Vincent/dp/1724625012>.

Accordingly, 28 documents are released in whole or in part, and 132 documents are withheld. As provided by the FOIA and 18 C.F.R. §388.110(a)(1) of the Commission's regulations, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao", written in a cursive style.

Leonard M. Tao  
Director  
Office of External Affairs

Enclosures (28)